

FIFTH DAY.

(Friday, May 13, 1927.)

The House met at 11 o'clock a. m., pursuant to adjournment, and was called to order by Speaker Bobbitt.

The roll was called and the following members were present:

Acker.	Long.
Albritton.	Loy.
Alexander.	Masterson.
Avis.	McCombs.
Bass.	McGill.
Bateman.	Merritt.
Bird.	Minor.
Black.	Morse.
Boggs.	Moursund.
Boon.	Murphy.
Branch.	Nabors.
Brice.	Nicholson.
Brown.	Olsen.
Conway.	Parrish of Travis.
Cornwell.	Pavlica.
Cox.	Pearce.
Cummings.	Petsch.
Daniel.	Poage.
Davis.	Pool.
DeBerry.	Pope.
Denman.	Purl.
Dielmann.	Reagan.
Enderby.	Renfro
Eickenroht.	of Angelina.
Farrar.	Renfro of Mills.
Faulk.	Rogers of Hays.
Fly.	Rogers of Shelby.
Forbes.	Rowell.
Foster.	Runge.
Gilbert.	Sanders.
Graves.	Satterwhite.
Gray.	Shaver.
Hagaman.	Sheats.
Hall.	Shirley.
Harding.	Simmons.
Harman.	Sinks.
Hefley.	Smith of El Paso.
High.	Smith of Nueces.
Hogg.	Smith of Smith.
Holder.	Snelgrove.
Holland.	Stevenson.
Hornaday.	Stout.
Johnson	Sutton.
of Anderson.	Swain.
Johnson	Taylor.
of Dimmit.	Teer.
Jones.	Tillotson.
Justice.	Turner.
Keeton.	Van Zandt.
Kemble.	Veatch.
Kennedy.	Walker.
Kincaid.	Wallace
King of Hopkins.	of Freestone.
Kirkland.	Wallace of Panola.
Land.	Wallace of Smith.
Lipscomb.	Ware.
Loftin.	Wassell.

Webb.
Wells.
Williams
of Sabine.

Williams
of Travis.
Williamson.
Woodall.
Young.

Absent.

Anderson.
Barnett.
Bonham.
Dunlap.

Duvall.
Finlay.
Fuchs.
Smyth.

Absent—Excused.

Barron.
Beck.
Gates.
Gibson.
Jacks.
Kayton.
Kenyon.
King of
Throckmorton.
Kinneear.
Kirby.
McKean.

Montgomery.
Parish of Runnels.
Porter.
Powell.
Rawlins.
Shearer.
Smith of Atascosa.
Stell.
Storey.
Waddell.
Whitaker.
Woodruff.

A quorum was announced present.
Prayer was offered by Rev. J. C.
Mitchell, Chaplain.

LEAVES OF ABSENCE GRANTED.

The following members were granted leaves of absence on account of important business:

Mr. Gibson for today, on motion of Mr. Smith of Smith.

Mr. Kayton for today, on motion of Mr. Pope.

Mr. Rawlins and Mr. Shearer for today, on motion of Mr. Wells.

Mr. Kirby for today and tomorrow, on motion of Mr. Morse.

Mr. Porter for today, on motion of Mr. Sutton.

Mr. Kenyon for today, on motion of Mr. Jones.

Mr. Woodruff for today and tomorrow, on motion of Mr. Cox.

Mr. Jacks for today, on motion of Mr. Purl.

Mr. Storey for today, on motion of Mr. Daniel.

Mr. Waddell for today, on motion of Mr. Eickenroht.

Mr. Beck for today, on motion of Mr. Stevenson.

Mr. Barron for today, on motion of Mr. Cox.

The following member was granted leave of absence on account of illness:

Mr. Kinneear for today, on motion of Mr. Reagan.

HOUSE BILLS ON FIRST READING.

The following House bills, introduced today, were laid before the House, read severally first time, and referred to the appropriate committees, as follows:

By Mr. Tillotson:

H. B. No. 13, A bill to be entitled "An Act to amend Chapter 186 of the General Laws of the Regular Session of the Thirty-ninth Legislature, which chapter provides for the construction and maintenance of State highways under the control of the State Highway Department; and which amendment provides for the construction and maintenance of the State Highway system under the direct control of the State Highway Department, expresses the policy of the State in such road construction, and the methods of financing such construction; defined what roads shall be parts of the State Highway system, and the terms employed in the Act; authorized the commissioners court of any county to grant aid for the improvement by the State Highway Department of any section or sections of said highway system located in said county; regulating the manner of paying such aid; regulating the making of contracts by the State Highway Department for the improvement of said highway system; authorizing the condemnation of materials to be used in the improvement of a State highway and of land for rights of way; declaring the invalidity of any provision of this Act shall not affect the validity of any other provision; repealing all laws and parts of laws in direct conflict with this Act."

Referred to Committee on Highways and Motor Traffic.

By Mr. Nicholson and Mr. Reagan:

H. B. No. 14, A bill to be entitled "An Act to amend Section 2 of Chapter 16 of the General Laws passed by the Thirty-ninth Legislature, First Called Session, being Senate bill No. 287, so as to authorize the voting and issuance of county road bonds without purchasing the roads of any road district in such county, or compensating any such road district therefor, and without voting or issuing bonds in exchange for such outstanding road district bonds, and declaring an emergency."

Referred to Committee on Highways and Motor Traffic.

BILL ORDERED NOT PRINTED.

On motion of Mr. DeBerry, House bill No. 7 was ordered not printed.

HOUSE BILL NO. 7 ON SECOND READING.

On motion of Mr. DeBerry, by unanimous consent, the regular order of business was suspended to take up and have placed on its second reading and passage to engrossment,

H. B. No. 7, A bill to be entitled "An Act to appropriate two million dollars, or so much thereof as may be necessary, out of the general revenue not otherwise appropriated, to supplement the State available school fund derived from all other sources for the support and maintenance of the public free schools of the State of Texas for the scholastic year beginning September 1, 1927, and ending August 31, 1928, and three million four hundred eighty thousand dollars to be appropriated for the same purpose for the scholastic year beginning September 1, 1928, and ending August 31, 1929, to enable the State Board of Education to declare a per capita apportionment of the State available school fund of fifteen dollars for each scholastic year of the biennium, 1927-1929; providing that for the year beginning September 1, 1927, and ending August 31, 1928, the Comptroller is directed to transfer one million dollars, or so much thereof as may be necessary, on the first day of April, 1928, and one million dollars, or so much thereof as may be necessary, on the first day of July, 1928; and providing further, that the Comptroller is directed to transfer one million seven hundred forty thousand dollars, or so much thereof as may be necessary, on the first day of April, 1929, and one million seven hundred forty thousand dollars, or so much thereof as may be necessary, on the first day of July, 1929, and place it to the credit of the available school fund to carry out the provisions of this Act, and declaring an emergency."

The Speaker laid the bill before the House and it was read second time.

Question—Shall the bill be passed to engrossment?

RECESS.

On motion of Mr. Satterwhite, the House, at 12 o'clock m., took recess to 1:30 o'clock p. m. today.

AFTERNOON SESSION.

The House met at 1:30 o'clock p. m. and was called to order by Speaker Bobbitt.

HOUSE BILL NO. 7 ON PASSAGE
TO ENGROSSMENT.

The House resumed consideration of pending business, same being House bill No. 7, appropriating certain sums of money to supplement the available school fund, on its passage to engrossment, the bill having heretofore been read second time.

Mr. Young offered the following (committee) amendment to the bill:

Amend House bill No. 7 by striking out all below the enacting clause and insert in lieu thereof the following:

"Section 1. There is hereby appropriated out of any funds in the State Treasury not otherwise appropriated, the sum of one million five hundred thousand dollars for the scholastic year beginning September 1, 1927, and ending August 31, 1928, and the sum of three million dollars, or so much thereof as may be necessary for the scholastic year beginning September 1, 1928, and ending August 31, 1929, to supplement the State available school funds derived from all other sources sufficient to guarantee a per capita scholastic apportionment of fifteen dollars for the scholastic year beginning September 1, 1927, and ending August 31, 1928, and to guarantee a per capita apportionment of fifteen dollars for the scholastic year beginning September 1, 1928, and ending August 31, 1929. It is expressly provided by this Act that should the appropriation for the scholastic year beginning September 1, 1927, and ending August 31, 1928, be more than enough to make an apportionment of fifteen dollars for each scholastic in this State the remaining part of said appropriation shall be placed to the credit of the available school fund for the year beginning September 1, 1928, and ending August 31, 1929.

"Sec. 2. Any fund, or funds, coming into the available school fund which may be provided by the Fortieth Legislature, in addition to funds heretofore provided, shall be apportioned according to law, and such fund, or funds, shall be used in making up the total of fifteen dollars for each scholastic for each year of the biennium beginning September 1, 1927, and ending August 31, 1929.

"Sec. 3. The appropriation hereby made in the sum of one million five hundred thousand dollars for the scholastic year beginning September 1, 1927, and ending August 31, 1928, under the conditions and limitations herein set forth shall become available and a transfer of the funds shall be made in the following

manner: Seven hundred fifty thousand dollars on the first day of April, 1928, and seven hundred fifty thousand dollars on the first day of July, 1928; and the appropriation hereby made in the sum of three million dollars for the scholastic year beginning September 1, 1928, and ending August 31, 1929, under the conditions and limitations herein set forth shall become available and a transfer of the funds, or so much thereof as may be necessary to make the per capita apportionment of fifteen dollars for said scholastic year shall be made in the following manner: One million five hundred thousand dollars the first day of April, 1929, and one million five hundred thousand dollars the first day of July, 1929; said funds when transferred according to the provisions of this Act shall be placed to the credit of the available school fund to guarantee a per capita apportionment of fifteen dollars for each of the scholastic years of the biennium, September 1, 1927, to August 31, 1929.

"Sec. 4. The fact that there is not enough revenue coming into the available school fund to guarantee a per capita apportionment of fifteen dollars creates an emergency and an imperative public necessity that the constitutional rule requiring that a bill be read on three several days in each house be suspended and the rule is suspended and this law shall take effect and be in force from and after its passage and it is so enacted."

Mr. Van Zandt offered the following amendment to the amendment:

Amend House bill No. 7 by striking out the word "April" wherever it appears in said bill and insert in lieu thereof the word "March."

The amendment was adopted.

Mr. Van Zandt offered the following amendment to the amendment:

Amend House bill No. 7 by striking out the word "July" wherever it appears in said bill and insert in lieu thereof "the following June."

On motion of Mr. Satterwhite the amendment was tabled.

Question then recurring on the amendment by Mr. Young as amended, it was adopted.

Mr. Young offered the following (committee) amendment to the bill:

Amend House bill No. 7 by striking out all above the enacting clause and insert in lieu thereof the following:

H. B. No. 7, A bill to be entitled "An Act to appropriate one million five hundred thousand dollars out of the

general revenue, not otherwise appropriated, to supplement the State available school fund derived from all other sources for the support and maintenance of the public free schools of the State of Texas for the scholastic year beginning September 1, 1927, and ending August 31, 1928, and three million dollars, or so much thereof as may be necessary, to be appropriated for the same purpose for the scholastic year beginning September 1, 1928, and ending August 31, 1929, to enable the State Board of Education to declare a per capita apportionment of the State available school fund of fifteen dollars for each scholastic year of the biennium, 1927-1929; providing for the transfer of these funds from the State Treasury into the available school fund, and declaring an emergency."

The amendment was adopted.

House bill No. 7 was then passed to engrossment.

HOUSE BILL NO. 7 ON THIRD READING.

Mr. Young moved that the constitutional rule requiring bills to be read on three several days be suspended and that House bill No. 7 be placed on its third reading and final passage.

The motion prevailed by the following vote:

Yeas—105.

Mr. Speaker.	Foster.
Acker.	Gates.
Alexander.	Gilbert.
Avis.	Graves.
Bass.	Gray.
Bateman.	Hagaman.
Bird.	Hall.
Black.	Harding.
Boggs.	Harman.
Boon.	Hefley.
Branch.	High.
Brice.	Hogg.
Brown.	Hornaday.
Conway.	Johnson
Cornwell.	of Dimmit.
Cummings.	Jones.
Daniel.	Justice.
Davis.	Keeton.
DeBerry.	Kemble.
Denman.	Kennedy.
Dielmann.	Kincaid.
Enderby.	King of Hopkins.
Eickenroht.	King of
Farrar.	Throckmorton.
Faulk.	Kirkland.
Fly.	Lipscomb.
Forbes.	Loftin.

Long.	Sinks.
Loy.	Smith of Nueces.
Masterson.	Smith of Smith.
McCombs.	Snelgrove.
McGill.	Stevenson.
Merritt.	Stout.
Minor.	Sutton.
Morse.	Swain.
Moursund.	Taylor.
Murphy.	Teer.
Nicholson.	Tillotson.
Pavlica.	Turner.
Pearce.	Van Zandt.
Petsch.	Veatch.
Poage.	Walker.
Pool.	Wallace
Pope.	of Freestone.
Purl.	Wallace of Panola.
Renfro	Wallace of Smith.
of Angelina.	Ware.
Renfro of Mills.	Wassell.
Rogers of Hays.	Wells.
Rowell.	Whitaker.
Runge.	Williams
Sanders.	of Sabine.
Satterwhite.	Williams
Shaver.	of Travis.
Sheats.	Williamson.
Shirley.	Woodall.
Simmons.	Young.

Nays—2.

Albritton.	Olsen.
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Absent.

Bonham.	Smyth.
Duvall.	Webb.
Smith of El Paso.	

Absent—Excused.

Anderson.	Land.
Barnett.	McKean.
Barron.	Montgomery.
Beck.	Nabors.
Cox.	Parish of Runnels.
Dunlap.	Parrish of Travis.
Finlay.	Porter.
Fuchs.	Powell.
Gibson.	Rawlins.
Holder.	Reagan.
Holland.	Rogers of Shelby.
Jacks.	Shearer.
Johnson	Smith of Atascosa.
of Anderson.	Stell.
Kayton.	Storey.
Kenyon.	Waddell.
Kinnear.	Woodruff.
Kirby.	

The Speaker then laid House bill No. 7 before the House on its third reading and final passage.

The bill was read third time and was passed by the following vote:

Yeas—105.

Mr. Speaker.	Merritt.
Acker.	Minor.
Albritton.	Morse.
Alexander.	Moursund.
Avis.	Murphy.
Bass.	Nicholson.
Bateman.	Olsen.
Bird.	Pavlica.
Black.	Pearce.
Boggs.	Petsch.
Boon.	Poage.
Branch.	Pool.
Brice.	Pope.
Brown.	Purl.
Conway.	Renfro
Cornwell.	of Angelina.
Cummings.	Renfro of Mills.
Daniel.	Rogers of Hays.
Davis.	Rowell.
DeBerry.	Runge.
Denman.	Sanders.
Dielmann.	Satterwhite.
Enderby.	Shaver.
Eickenroht.	Sheats.
Farrar.	Shirley.
Fly.	Simmons.
Forbes.	Sinks.
Foster.	Smith of Nueces.
Gilbert.	Smith of Smith.
Graves.	Snelgrove.
Gray.	Stevenson.
Hagaman.	Stout.
Hall.	Sutton.
Harding.	Swain.
Harman.	Taylor.
Hefley.	Teer.
High.	Tillotson.
Hogg.	Turner.
Hornaday.	Van Zandt.
Johnson	Veatch.
of Dimmit.	Walker.
Jones.	Wallace
Justice.	of Freestone.
Kayton.	Wallace of Panola.
Keeton.	Wallace of Smith.
Kemble.	Ware.
Kennedy.	Wassell.
Kincaid.	Webb.
King of Hopkins.	Wells.
King of	Whitaker.
Throckmorton.	Williams
Kirkland.	of Sabine.
Lipscomb.	Williams
Long.	of Travis.
Loy.	Williamson.
Masterson.	Woodall.
McCombs.	Young.
McGill.	

Absent.

Barnett.	Fuchs.
Bonham.	Gates.
Cox.	Land.
Duvall.	Loftin.
Faulk.	Nabors.

Smith of El Paso. Smyth.

Absent—Excused.

Anderson.	Montgomery.
Barron.	Parish of Runnels.
Beck.	Parrish of Travis.
Dunlap.	Porter.
Finlay.	Powell.
Gibson.	Rawlins.
Holder.	Reagan.
Holland.	Rogers of Shelby.
Jacks.	Shearer.
Johnson	Smith of Atascosa.
of Anderson.	Stell.
Kenyon.	Storey.
Kinnear.	Waddell.
Kirby.	Woodruff.
McKean.	

Mr. Poage moved that the House adjourn until 10 o'clock a. m. next Monday, and the motion was lost.

RELATING TO CONSIDERATION OF APPROPRIATION BILLS.

Mr. Tillotson moved that the House take up for consideration at this time, House bill No. 3, making an appropriation for the various eleemosynary institutions.

Mr. Van Zandt moved that the House take up for consideration at this time House bill No. 1, making certain appropriations for the Judiciary Department.

Question first recurring on the motion by Mr. Van Zandt, yeas and nays were demanded.

The motion was lost by the following vote.

Yeas—18.

Albritton.	Pope.
Farrar.	Renfro of Mills.
Hagaman.	Sheats.
Hefley.	Smith of Smith.
Masterson.	Stevenson.
McCombs.	Van Zandt.
McGill.	Walker.
Moursund.	Wassell.
Murphy.	Whitaker.

Nays—85.

Mr. Speaker.	Conway.
Acker.	Cornwell.
Alexander.	Cummings.
Avis.	Davis.
Bass.	DeBerry.
Bird.	Denman.
Black.	Dielmann.
Boon.	Enderby.
Branch.	Eickenroht.
Brice.	Faulk.
Brown.	Finlay.

Fly.	Poage.
Forbes.	Pool.
Foster.	Purl.
Gilbert.	Renfro
Graves.	of Angelina.
Gray.	Rogers of Hays.
Hall.	Runge.
Harding.	Sanders.
Harman.	Satterwhite.
High.	Shaver.
Hogg.	Shirley.
Holland.	Simmons.
Hornaday.	Smith of Nueces.
Jones.	Snelgrove.
Justice.	Stout.
Keeton.	Swain.
Kemble.	Taylor.
Kennedy.	Teer.
Kincaid.	Tillotson.
King of Hopkins.	Turner.
King of	Veatch.
Throckmorton.	Wallace
Kirkland.	of Freestone.
Land.	Wallace of Panola.
Lipscomb.	Ware.
Loftin.	Webb.
Long.	Wells.
Loy.	Williams
Merritt.	of Sabine.
Minor.	Williams
Morse.	of Travis.
Nicholson.	Williamson.
Olsen.	Woodall.
Pavlica.	Young.
Petsch.	

Present—Not Voting.

Bateman.	Wallace of Smith.
Johnson	
of Dimmit.	

Absent.

Boggs.	Nabors.
Cox.	Pearce.
Duvall.	Rogers of Shelby.
Fuchs.	Rowell.
Gates.	Sinks.
Holder.	Smith of El Paso.
Johnson	Smyth.
of Anderson.	Sutton.
Montgomery.	

Absent—Excused.

Anderson.	McKean.
Barnett.	Parish of Runnels.
Barron.	Parrish of Travis.
Beck.	Porter.
Bonham.	Powell.
Daniel.	Rawlins.
Dunlap.	Reagan.
Gibson.	Shearer.
Jacks.	Smith of Atascosa.
Kayton.	Stell.
Kenyon.	Storey.
Kinnear.	Waddell.
Kirby.	Woodruff.

Question then recurring on the motion by Mr. Tillotson, yeas and nays were demanded.

The motion was lost by the following vote:

Yeas—42.

Bass.	Pope.
Bateman.	Purl.
Black.	Rogers of Hays.
Conway.	Runge.
Dielmann.	Sanders.
Fly.	Satterwhite.
Forbes.	Simmons.
Foster.	Smith of Smith.
Gray.	Stevenson.
Hagaman.	Stout.
Hall.	Taylor.
Harding.	Teer.
Hefley.	Tillotson.
High.	Wallace
Hogg.	of Freestone.
Holland.	Wallace of Panola.
Kincaid.	Wells.
Lipscomb.	Williams
McCombs.	of Travis.
Murphy.	Williamson.
Nicholson.	Young.
Pearce.	

Nays—65.

Acker.	Long.
Albritton.	Loy.
Alexander.	Masterson.
Avis.	McGill.
Bird.	Merritt.
Boggs.	Morse.
Boon.	Moursund.
Brice.	Olsen.
Brown.	Pavlica.
Cornwell.	Petsch.
Cummings.	Poage.
Davis.	Pool.
DeBerry.	Renfro
Denman.	of Angelina.
Enderby.	Renfro of Mills.
Eickenroht.	Shaver.
Farrar.	Sheats.
Faulk.	Shirley.
Gilbert.	Sinks.
Graves.	Smith of Nueces.
Harman.	Snelgrove.
Hornaday.	Sutton.
Johnson	Swain.
of Dimmit.	Turner.
Jones.	Van Zandt.
Justice.	Veatch.
Keeton.	Walker.
Kemble.	Wallace of Smith.
Kennedy.	Ware.
King of Hopkins.	Wassell.
King of	Webb.
Throckmorton.	Whitaker.
Kirkland.	Williams
Land.	of Sabine.
Loftin.	Woodall.

Present—Not Voting.	
Branch.	
Absent.	
Cox.	Minor.
Duvall.	Montgomery.
Fuchs.	Nabors.
Gates.	Rogers of Shelby.
Holder.	Rowell.
Johnson	Smith of El Paso.
of Anderson.	Smyth.

Absent—Excused.	
Anderson.	McKean.
Barnett.	Parish of Runnels.
Barron.	Parrish of Travis.
Beck.	Porter.
Bonham.	Powell.
Daniel.	Rawlins.
Dunlap.	Reagan.
Finlay.	Shearer.
Gibson.	Smith of Atascosa.
Jacks.	Stell.
Kayton.	Storey.
Kenyon.	Waddell.
Kinnear.	Woodruff.
Kirby.	

COMMUNICATION FROM ATTORNEY GENERAL.

The following communication from the Attorney General was ordered printed in the Journal:

Office of the Attorney General,
Austin, Texas, May 12, 1927.

Hon. O. R. Van Zandt, Hon. Ben Wood-
all, House of Representatives, Capitol.

Gentlemen: This is to acknowledge receipt of your letter of even date herewith, addressed to the Attorney General, in which you ask if compensation fixed by statute can be reduced or augmented by a general appropriation bill. This question is very fully answered in an opinion rendered by Attorney General Looney to the House Appropriations Committee under date April 30, 1917, and we inclose a copy of that opinion for your information.

Very truly yours,
D. A. SIMMONS,
First Assistant Attorney General.

Opinion Number 1745.

The Legislature cannot increase the salary of State officers by appropriating a larger amount in the appropriation bill, where the salaries have been fixed by general law.

April 30, 1917.

Hon. George Mendell, Jr., Vice-Chairman,
House Appropriation Committee.

Dear Sir: I have a communication

from your committee of the 26th instant, as follows:

"The House Appropriation Committee, by a unanimous vote, has requested me to ask you for an opinion as to whether or not the Legislature, in the appropriation bill, can reduce or increase the salary of an officer or employe that has been fixed by statute."

Replying thereto, beg to say that it is our opinion that when the salary or compensation of an officer is fixed by law, in order to either increase or reduce the salary or compensation, the law itself would have to be amended under the usual procedure prescribed in the Constitution for amendments. This cannot be done in or as a part of an appropriation bill for several reasons.

In the first place a provision in an appropriation bill to either increase or diminish a salary is entirely distinct from the subject of appropriation for the support of the government, and not being germane, being an entirely different subject, to wit, the fixing of official fees or salaries, its inclusion is prohibited by Section 35, Article 3, of the Constitution, which reads as follows:

"No bill (except general appropriation bills, which may embrace the various subjects and accounts, for and on account of which moneys are appropriated) shall contain more than one subject, which shall be expressed in its title. But if any subject shall be embraced in an act, which shall not be expressed in the title, such act shall be void only as to so much thereof as shall not be so expressed."

In discussing this identical question, our Supreme Court, in the case of *Linden vs. Findley*, 92 Texas, 454, used this language:

"It would seem that when the Legislature is of opinion that the compensation fixed by law for the services of an officer is excessive, they should amend the law and reduce it, but that until so reduced they should make appropriation for the compensation which the law provides."

The converse of this proposition is inevitably true, that is, if the Legislature should be of the opinion that the salary or compensation of an officer fixed by law is inadequate they should amend the law and increase it, but until so increased they should make appropriation for the compensation which the law provides.

The Legislature, of course, can place limitation and restrictions upon the money they do appropriate. They could

refuse to appropriate money to pay salaries, of officers or make an appropriation of less than the compensation fixed by law. In neither event, however, would the office be abolished or the statute fixing the salaries be amended, or in any way affected. The office would still exist and the officer would be entitled to his salary as fixed by the law. However, he would, in the absence of an appropriation to pay his salary, have to wait for some future Legislature to make the necessary appropriation.

Our Supreme Court on this particular proposition, in the case above referred to, used this language:

"But should they fail to do this (make sufficient appropriation to pay the salary fixed by law), it is simply a case in which the officer has a legal right but no remedy except an application to another Legislature. Under our Constitution without an appropriation no money can be drawn from the Treasury."

Your attention is called to these authorities for the purpose of showing that the Legislature in appropriating money to pay salaries of officers is not dealing with the subject of fixing salaries or fees of office.

The latter is a distinct subject and must be dealt with separately, and the very law fixing the salary must be amended by a bill for that purpose.

The correctness of this proposition is supported by the case of the State vs. Steele, 57 Texas, 203.

In this case, the salary fixed by law for the Adjutant General at that time was \$3000, and the Legislature only appropriated \$2500 and in a suit to recover the difference our Supreme Court, in an opinion rendered by Chief Justice Gould, used this language:

"It is denied that the law fixing the salary at three thousand dollars was repealed by the acts making appropriations for the support of the State government, for it is said there is no express repeal, nor is there any manifest repugnancy in those laws. Reasons might exist for appropriating less than was known to be due, or the deficiency of the appropriation might be the result of mistake. It is not the policy of the law to leave the salaries of State officials to be fixed only where the appropriations are made for their payment. Nor is it consistent with constitutional requirement to allow the law declaring that the salary of the Adjutant General shall be three thousand dollars per annum to be amended so

as to make the amount twenty-five hundred dollars, unless the section as amended 'be re-enacted and published at length.' Const., Art. 3, Section 36. These considerations tend strongly to the conclusion that the failure of the Legislature to make adequate appropriations for the salary of the Adjutant General as fixed by law did not operate a repeal or amendment of that law, or defeat that officer's right to the full salary as fixed by the statute."

The law fixing the compensation of officers could not be amended to the extent of increasing or diminishing the compensation even for two years, except by a bill as provided in Section 36, Article 3, of the Constitution, which is as follows:

"No law shall be revived or amended by reference to its title; but in such case the act revived, or the section or sections amended, shall be re-enacted and published at length."

An amendment of the law fixing the salary of an officer being a subject distinct from the subject of appropriating money for the support of the government for two years, in our opinion, could not be considered by the Legislature, unless designated as one of the subjects for consideration at the special session. Section 40 of Article 3, of the Constitution, on this subject is as follows:

"When the Legislature shall be convened in special session, there shall be no legislation upon subjects other than those designated in the proclamation of the Governor calling such session, or presented to them by the Governor; and no such session shall be of longer duration than thirty days."

Any attempt to increase or diminish an officer's salary during his term of office is prohibited by the statutes of this State, Article 7086, as follows:

"The salaries of officer shall not be increased nor diminished during the term of office of the officers entitled thereto."

This is simply an Act of the Legislature, and, of course, the Legislature could by a valid law, pursuing the legislative procedure as prescribed in the Constitution, change this statute and increase or diminish the salary of an officer, but this cannot be done in an appropriation bill where the law itself has not been properly amended.

Without a valid pre-existing law authorizing it, the Legislature is prohibited by the Constitution from appropriating money to pay a larger compensation than that prescribed in the

statute. This constitutional provision is Section 44, Article 3, and reads as follows:

"The Legislature shall provide by law for the compensation of all officers, servants, agents and public contractors, not provided for in this Constitution, but shall not grant extra compensation to any officer, agent, servant or public contractor, after such public service shall have been performed or contract entered into for the performance of the same, nor grant by appropriation or otherwise any amount of money out of the Treasury of the State, to any individual, on a claim, real or pretended, when the same shall not have been provided for by pre-existing law, nor employ anyone in the name of the State, unless authorized by pre-existing law."

For the reasons above stated, we conclude, and so express our opinion, that the salary or compensation of officers as fixed by either the Constitution or statutes of this State, could neither be increased or diminished in an appropriation bill.

Yours very truly,
B. F. LOONEY,
Attorney General.

EMPLOYES ANNOUNCED.

The Speaker announced the following appointments:

Enrolling Clerk, Mrs. Ida C. Ewing.
Assistant Enrolling Clerk, Hobson Green.
Engrossing Clerk, Mrs. Bess Beeman.
Clerks—Mrs. Lily Gresham, Miss Eudora Hawkins, Miss Rosalin Widen.

ADJOURNMENT.

Mr. Tillotson moved that the House adjourn until 10 o'clock a. m. next Monday.

Yeas and nays were demanded, and the motion prevailed by the following vote:

Yeas—62.

Acker.	Davis.
Albritton.	DeBerry.
Alexander.	Denman.
Avis.	Enderby.
Bass.	Eickenroht.
Bird.	Farrar.
Black.	Faulk.
Boggs.	Gates.
Boon.	Gilbert.
Branch.	Graves.
Brice.	Hagaman.
Cornwell.	Harding.
Cummings.	Harman.

Hefley.	Rowell.
High.	Runge.
Johnson	Shaver.
of Dimmit.	Sheats.
Jones.	Shirley.
Justice.	Simmons.
Keeton.	Sinks.
Kennedy.	Smith of Nueces.
Kincaid.	Snelgrove.
King of	Sutton.
Throckmorton.	Swain.
Kirkland.	Veatch.
Land.	Walker.
Loftin.	Ware.
Merritt.	Webb.
Moursund.	Whitaker.
Olsen.	Williams
Pavlica.	of Sabine.
Pearce.	Woodall.
Poage.	

Nays—39.

Bateman.	Petsch.
Conway.	Pope.
Dielmann.	Purl.
Fly.	Rogers of Hays.
Forbes.	Rogers of Shelby.
Foster.	Sanders.
Gray.	Satterwhite.
Hall.	Smith of Smith.
Hogg.	Stevenson.
Holland.	Stout.
Kemble.	Taylor.
Lipscomb.	Van Zandt.
Long.	Wallace
Masterson.	of Freestone.
McCombs.	Wallace of Panola.
McGill.	Wassell.
Minor.	Wells.
Morse.	Williams of Travis.
Murphy.	Williamson.
Nicholson.	Young.

Absent.

Duvall.	Renfro
Fuchs.	of Angelina.
Holder.	Renfro of Mills.
Hornaday.	Smyth.
King of Hopkins.	Teer.
Loy.	Tillotson.
Nabors.	Turner.
Pool.	

Absent—Excused.

Anderson.	Johnson
Barnett.	of Anderson.
Barron.	Kayton.
Beck.	Kenyon.
Bonham.	Kinnear.
Brown.	Kirby.
Cox.	McKean.
Daniel.	Montgomery.
Dunlap.	Parish of Runnels.
Finlay.	Parrish of Travis.
Gibson.	Porter.
Jacks.	Powell.

Rawlins.	Stell.
Reagan.	Storey.
Shearer.	Waddell.
Smith of Atascosa.	Wallace of Smith.
Smith of El Paso.	Woodruff.

The House, accordingly, at 2:50 o'clock p. m., adjourned until 10 o'clock a. m. next Monday.

APPENDIX.

STANDING COMMITTEE REPORTS.

The following standing committee has today filed favorable reports on bills as follows:

Appropriations: House bills Nos. 1, 3, 7 and 9, and Senate bill No. 1.

SIXTH DAY.

(Monday, May 16, 1927.)

The House met at 10 o'clock a. m., pursuant to adjournment, and was called to order by Mr. Fly.

The roll was called and the following members were present:

Acker.	Graves.
Albritton.	Gray.
Alexander.	Hagaman.
Anderson.	Hall.
Barron.	Harding.
Bass.	Harman.
Bateman.	Hefley.
Beck.	High.
Bird.	Holland.
Black.	Johnson
Boggs.	of Dimmit.
Bonham.	Jones.
Boon.	Justice.
Branch.	Keeton.
Brice.	Kemble.
Brown.	Kennedy.
Cornwell.	Kincaid.
Cox.	King of Hopkins.
Cummings.	King of
Daniel.	Throckmorton.
Davis.	Kirkland.
DeBerry.	Land.
Denman.	Lewis.
Dielmann.	Lipscomb.
Duvall.	Loftin.
Enderby.	Long.
Eickenroht.	Loy.
Farrar.	McGill.
Faulk.	McKean.
Finlay.	Merritt.
Forbes.	Minor.
Gates.	Montgomery.
Gilbert.	Morse.

Moursund.	Smith of El Paso.
Murphy.	Smyth.
Nabors.	Snelgrove.
Nicholson.	Stevenson.
Olsen.	Stout.
Pavlica.	Swain.
Pearce.	Taylor.
Poage.	Teer.
Pope.	Tillotson.
Porter.	Turner.
Powell.	Van Zandt.
Purl.	Veatch.
Rawlins.	Walker.
Renfro	Wallace
of Angelina.	of Freestone.
Rogers of Shelby.	Wallace of Panola.
Runge.	Wallace of Smith.
Sanders.	Ware.
Satterwhite.	Wassell.
Shaver.	Webb.
Shearer.	Whitaker.
Sheats.	Williams
Shirley.	of Travis.
Simmons.	Williamson.
Sinks.	Woodall.
Smith of Atascosa.	Young.

Absent.

Barnett.	Petsch.
Dunlap.	Pool.
Foster.	Rowell.
Hornaday.	Williams
Kirby.	of Sabine.
Parrish of Travis.	

Absent—Excused.

Avis.	McCombs.
Conway.	Parish of Runnels.
Fuchs.	Reagan.
Gibson.	Renfro of Mills.
Hogg.	Rogers of Hays.
Holder.	Smith of Nueces.
Jacks.	Smith of Smith.
Johnson	Stell.
of Anderson.	Storey.
Kayton.	Sutton.
Kenyon.	Waddell.
Kinnear.	Wells.
Masterson.	Woodruff.

A quorum was announced present.
Prayer was offered by Rev. J. C. Mitchell, Chaplain.

LEAVES OF ABSENCE GRANTED.

The following members were granted leaves of absence on account of important business:

Mr. Wells for today, on motion of Mr. Rawlins.

Mr. Reagan for today, on motion of Mr. Stout.

Mr. Sutton for today and the balance of the week, on motion of Mr. Denman.